

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 1424

January 26, 2014

SUMMARY OF BILL: Decreases, from 5.000 percent to 4.825 percent, the state sales tax rate on the retail sale of food and food ingredients, effective June 15, 2014, if Internet tax revenue collected in FY13-14 exceeds \$4,387,791 as of May 1, 2014, or effective June 15, 2015, if such collections do not exceed \$4,387,791 by May 1, 2014, but do exceed that amount in FY14-15 by May 1, 2015. Decreases the tax rate further in subsequent years if surplus internet tax revenue, as defined by this bill, is anticipated to be collected, as determined by the Commissioner of Finance and Administration (F&A). Requires the tax rate to be adjusted on any July 1 if no surplus Internet tax revenue is collected in any fiscal year and the Commissioner determines that in that fiscal year anticipated Internet tax revenue is not sufficient to maintain the reduced tax rate in the next fiscal year.

ESTIMATED FISCAL IMPACT:

**Decrease State Revenue – Net Impact – \$671,900/FY13-14
\$16,349,500/FY14-15
\$29,855,700/FY15-16 and Subsequent Years**

**Decrease Local Revenue – Net Impact – \$23,600/FY13-14
\$573,200/FY14-15
\$1,046,800/FY15-16 and Subsequent Years**

Assumptions:

- Pursuant to Tenn. Code Ann. § 67-6-515(c), on January 1, 2014, one taxpayer will begin collecting and remitting the sales and use tax on remote sales.
- According to the taxpayer's 10-K filings, the taxpayer had approximately:
\$12,828,000,000 in net sales in North America in 2009, \$18,707,000,000 (45.83 percent growth) in 2010, \$26,705,000,000 (42.75 percent growth) in 2011, and \$34,813,000,000 (30.36 percent growth) in 2012. According to the taxpayer's October 2013 10-Q filing, its North American net sales for the first nine months of calendar year 2013 grew 28.92 percent over the same time period in calendar year 2012 (\$29,186,000,000 vs. \$22,638,000,000).
- The taxpayer's net sales in North America in 2013 are estimated to be \$44,880,919,600 (\$34,813,000,000 x 128.92%). The taxpayer's net sales in North America in 2014 are estimated to grow an additional 15 percent, to \$51,613,057,540 (\$44,880,919,600 x

15.0%). This number is assumed to be applicable to FY13-14 and is assumed to remain constant in subsequent years.

- Based on the United States Census Bureau data, Tennessee represented approximately 1.851 percent of the North American population in 2013. The taxpayer's net sales in Tennessee are estimated to be \$955,357,695 ($\$51,613,057,540 \times 1.851\%$) in FY13-14 and subsequent years.
- Fifty percent of the taxpayer's remote sales in Tennessee, or \$477,678,848, will be subject to the state and local sales tax.
- The current state sales tax rate is 7.0 percent; the average local option sales tax rate is estimated to be 2.5 percent.
- Pursuant to Tenn. Code Ann. § 67-6-103(a)(3)(A), local governments receive 4.603 percent of state sales tax revenue as state-shared sales tax revenue.
- Pursuant to Tenn. Code Ann. § 67-6-103(q), no portion of revenue derived from the 0.5 percent sales tax rate increase, from 5.5 percent to 6.0 percent (effective April 1, 1992), or the 1.0 percent sales tax rate increase, from 6.0 percent to 7.0 percent (effective July 15, 2002), shall be distributed to local government.
- The effective rate of apportionment to local government pursuant to the state-shared allocation is estimated to be 3.617% [$(5.5\%/7.0\%) \times 4.603\%$].
- The net recurring state sales tax revenue is estimated to be \$32,228,084 [$(\$477,678,848 \times 7.0\%) - (\$477,678,848 \times 7.0\% \times 3.617\%)$].
- The total recurring local sales tax revenue is estimated to be \$13,151,406 [$(\$477,678,848 \times 2.5\%) + (\$477,678,848 \times 7.0\% \times 3.617\%)$].
- Due to the effective date (January 1, 2014) of the imposition of the tax on remote sales, the first year (FY13-14) impact is estimated to be 50 percent of the recurring annual impact (\$16,114,042 in state sales tax revenue and \$6,575,703 in local sales tax revenue).
- By May 15, 2014, the Commissioner of F&A will report the amount of accrued, recurring Internet tax revenue collected as of May 1, 2014, and if such amount exceeds \$4,387,791, the state sales tax rate on the retail sale of food and food ingredients will decrease from 5.000 percent to 4.825 percent, effective June 15, 2014.
- By May 1, 2014, three months, or 50 percent, of the estimated FY13-14 collections will be accrued. The total amount of accrued state sales tax revenue on remote sales is estimated to be \$8,057,021 ($\$16,114,042 \times 50.0\%$).
- Since this amount is greater than \$4,387,791, the state sales tax rate on the retail sale of food and food ingredients will decrease to 4.825 percent, effective June 15, 2014.
- FY12-13 tax collections from the sales tax on food and food ingredients are estimated to be \$518,295,381. FY13-14 year-to-date growth in such collections through December is negative 2.06 percent. Under current law, state sales tax collections derived from food and food ingredients in FY13-14 are estimated to be \$507,618,496 [$\$518,295,381 \times (100.00\% - 2.06\%)$]. This number is assumed to remain constant in subsequent years under current law.
- The decrease in state sales tax collections derived from the retail sale of food and food ingredients in FY14-15, as a result of decreasing the tax rate from 5.000 percent to 4.825 percent, is estimated to be \$17,766,647 [$\{\$507,618,496 - [(\$507,618,496 / 5.000\%) \times 4.825\%]\}$].

- The net decrease in state sales tax collections derived from the retail sale of food and food ingredients in FY14-15, as a result of decreasing the tax rate from 5.000 percent to 4.825 percent, is estimated to be \$16,948,848 [$\$17,766,649 - (\$17,766,647 \times 4.603\%)$].
- The decrease in local sales tax collections derived from the retail sale of food and food ingredients in FY14-15, as a result of decreasing the tax rate from 5.000 percent to 4.825 percent, is estimated to be \$817,799 ($\$17,766,647 \times 4.603\%$).
- Fifty percent of tax savings, or \$8,883,324 ($\$17,766,647 \times 50.0\%$), will be spent in the economy on other non-food sales-taxable goods and services.
- The resulting net increase in state sales tax revenue in FY14-15 is estimated to be \$599,341 [$(\$8,883,324 \times 7.0\%) - (\$8,883,324 \times 7.0\% \times 3.617\%)$]; the total increase in local sales tax revenue in FY14-15 is estimated to be \$244,575 [$(\$8,883,324 \times 2.5\%) + (\$8,883,324 \times 7.0\% \times 3.617\%)$].
- The net decrease in state revenue in FY14-15 is estimated to be \$16,349,507 ($\$16,948,848 - \$599,341$).
- The net decrease in local revenue in FY14-15 is estimated to be \$573,224 ($\$817,799 - \$244,575$).
- Due to the effective date of the tax rate change (June 15, 2014) the fiscal impact in FY13-14 is estimated to be the following: a net decrease in state revenue of \$671,898 [$(\$16,349,507 / 365 \text{ days}) \times 15 \text{ days}$]; and a net decrease in local revenue of \$23,557 [$(\$573,224 / 365 \text{ days}) \times 15 \text{ days}$].
- “Surplus Internet tax revenue” is defined in this bill as the amount by which Internet tax revenue collected during the then current fiscal year exceeds “the estimated amount of anticipated, recurring Internet tax revenue” to be collected for such year.
- It is assumed that “the estimated amount of anticipated, recurring Internet tax revenue” referred to in this bill is equal to \$17,551,164, the amount derived in fiscal note for HB2370 – SB2232 from 2012, dated February 7, 2012.
- Therefore, the surplus Internet tax revenue in FY14-15 is estimated to be \$14,676,920 ($\$32,228,084 - \$17,551,164$).
- The state sales tax rate on the retail sale of food and food ingredients will decrease, effective July 1, 2015, by the percentage that would decrease revenue by an additional \$14,676,920, of which \$14,001,341 will be the state revenue decrease [$\$14,676,920 - (\$14,676,920 \times 4.603\%)$], and \$675,579 ($\$14,676,920 \times 4.603\%$) will be local revenue decrease.
- Fifty percent of tax savings, or \$7,338,460 ($\$14,676,920 \times 50.0\%$), will be spent in the economy on other non-food sales-taxable goods and services.
- The resulting net increase in state sales tax revenue in FY15-16 is estimated to be \$495,112 [$(\$7,338,460 \times 7.0\%) - (\$7,338,460 \times 7.0\% \times 3.617\%)$]; the total increase in local sales tax revenue in FY15-16 is estimated to be \$202,042 [$(\$7,338,460 \times 2.5\%) + (\$7,338,460 \times 7.0\% \times 3.617\%)$].
- The net decrease in state revenue in FY15-16 is estimated to be \$29,855,736 ($\$16,349,507 + \$14,001,341 - \$495,112$).
- The net decrease in local revenue in FY15-16 is estimated to be \$1,046,761 ($\$573,224 + \$675,579 - \$202,042$).
- These amounts are assumed to remain constant in subsequent years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

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